IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4493 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHADRESH SUNDARLAL PATEL BROTHER OF VIJAY S PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 4493 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR HH PATEL Ld. AGP for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 19/06/2002

ORAL JUDGEMENT

Heard learned counsel Mr.Anil S Dave for the petitioner and Mr. HH Patel learned AGP for the respondents.

By filing this petition the real brother of the detenu has challenged the legality and validity of the order of detention dated 5.9.2001 passed by the Police Commission, City of Ahmedabad, Annexure-A in exercise of the powers vested under sec. 3 of the Prevention of Anti-Social Activities Act, 1985.

The grounds of detention served upon the detenu paints him as dangerous person involved in number of property related offences punishable under sec. 379 of IPC. It has been mentioned in the grounds for detention that the detenu was found involved in five different offences registered at Navangpura and Ellisbridge Police Station of city of Ahmedabad and the last offence registered is of lifting a spare-wheel of a parked (two wheeler) vehicle worth Rs. 500/ on 20.8.2001.

The validity of the order has been challenged on the number of grounds but the learned counsel has mainly focussed his argument on one ground that the authority has committed a serious error in arriving at a conclusion that the so-called activities of the detenu affect the publicorder. It is submitted that even for the sake of arguments, if it is accepted that the detenu has been involved in all these offences even than each act can be said to be a criminal wrong which would affect the "law and order" and not "public order." So, there was no need or scope or jurisdiction to pass any order of detention.

Ld. AGP Mr. Patel has resisted the petition and has submitted that the ratio of the decision in the case of Premsing @ Pallu Jesing Rajput vs. State of Gujarat & Ors., reported in 1999(1) GLH P. 648 can be applied to the facts of this case. The detenu is a habitual offender and has committed five offences punishable under Chapter-XVII of IPC. Referring the relevant provisions of sec. 2(c), it is submitted that the activity of the detenu places him in a category of "Dangerous Person" in reference to sub-section 4 of section 3 of the PASA Act. On careful consideration of this decision, it transpires that the detenu in the cited case was found involved in different types of property offences including the offence punishable under sec. 392 and 387 of IPC. The decision of the Apex Court reported in 1995(2) GLR p. 1268 in the case of Mustakmiya Jabbarmiya Shaikh vs. Commissioner of Police deals with the concept of public order has been referred by the Learned Single Judge. Mr. Dave learned counsel for the petitioner has also placed reliance on this very decision. In more than one case, the Apex Court has drawn the distinction between the

"public order" and "law and order". However, the sharp distinction has been drawn in the case of Mustakmiya Jabbarmiya Shaikh (supra) in para-9 of the decision and the Apex Court has held that:

> "Sub-sec. (4) of Sec. 3 also provides that for the purpose of Sec. 3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a "dangerous persons" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of "acting in any manner prejudicial to the maintenance of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality."

The submission of Mr. Dave that the detenu should not have been detained under PASA as a dangerous person is supported by a decision of this Court reported

in 2000(1) GLH p. 393 in the case of Ashokbhai Jivraj @ Jivabhai Solanki vs. Police Commissioner, Surat & Ors. This Court in para-22 of the decision has said that:

> Para-22: So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law."

The detaining authority is supposed to record the subjective satisfaction, in light of entire set of facts and circumstances available on record, and placed by Sponsoring mechanisum. The order of detention requires to be passed in reference to the maintenance of public order and if this element, in substance, is missing, than the powers under sec. 3 of the PASA Act cannot be exercised and such an order of detention shall have to be quashed and set aside. In the case of Ashok Jivraj, the Division Bench was dealing with similar set of facts where the detenu was found involved in four offences punishable under IPC and two other unregistered offences for which the statements of two witnesses were available on record.

One unreported decision passed in Special Criminal Application No. 1681 of 1992 is also placed before the Court and in that case, the detenu was found involved in around 19 different criminal cases. All punishable undeer chapter-XVII of IPC. This chapter is sub-devided in three pars. For the purpose of PASA proceedings, cases punishable under sec. 379 or 380 cannot be equated with other offences such as offences under sec. 387, 392, 394, 397 etc. Plain reading of the judgment reveals that the detaining authority must have decided to detain the petitioner/detenu as he was found to be a habitual thief, even than this court appreciating the ratio of the decision in the case of Harpreet Kaur

vs. State of Maharashtra, reported in AIR 1992 SC 979 held that in each case the courts have to see the length, magnitude and itensity of the questionable activities of a person to find out whether his activities are prejudicial to maintenance of 'public order'or only 'law and order'. In present case, on facts, this court is of the view that the detenu, even the say of the detaining authority is accepted, was involved in stilling two wheelers parked or some parts of such vehicle. In absence of other cogent set of facts cannot be said or held that these criminal wrong would affects the "public order" and, therefore, the say of the learned counsel for the petitioner shall have to be accepted.

On 17.1.2002, this Court while dealing with the SCA No. 10193 of 2001 (Coram: A.L. Dave, J.) also confirmed the above said ratio and has held that "it is clear that the registered offence relate to theft of aluminium/copper wire. There is nothing to indicate that there was any disturbance to public order."

In view of the aforesaid discussion and the reasons, this petition is allowed. The impugned order of detention dated 5.9.2001 passed by Police Commissioner, City of Ahmedabad is here
detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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